APPEALS NEWS

Massachusetts Department of Education
Bureau of Special Education Appeals

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EDITOR'S NOTE

Since the publication of the last issue of Appeals News, several valued employees have resigned their positions: Stephen Bardige, Assistant Director; Lyle Greenman, Hearing Officer; Paulette Johnson, Hearings Stenographer; and Paulisa Jordan, Principal Clerk. The staff of the Bureau wishes them well.

On the brighter side, the Bureau has been fortunate in gaining capable new employees. They are: Arthur Stewart, Educational Specialist IV; Lindsay Byrne, Hearing Officer; Cielo Cortes, Principal Clerk; and Donna Brathwaite, Senior Clerk. The staff bids them welcome.

Ruby B., Editor

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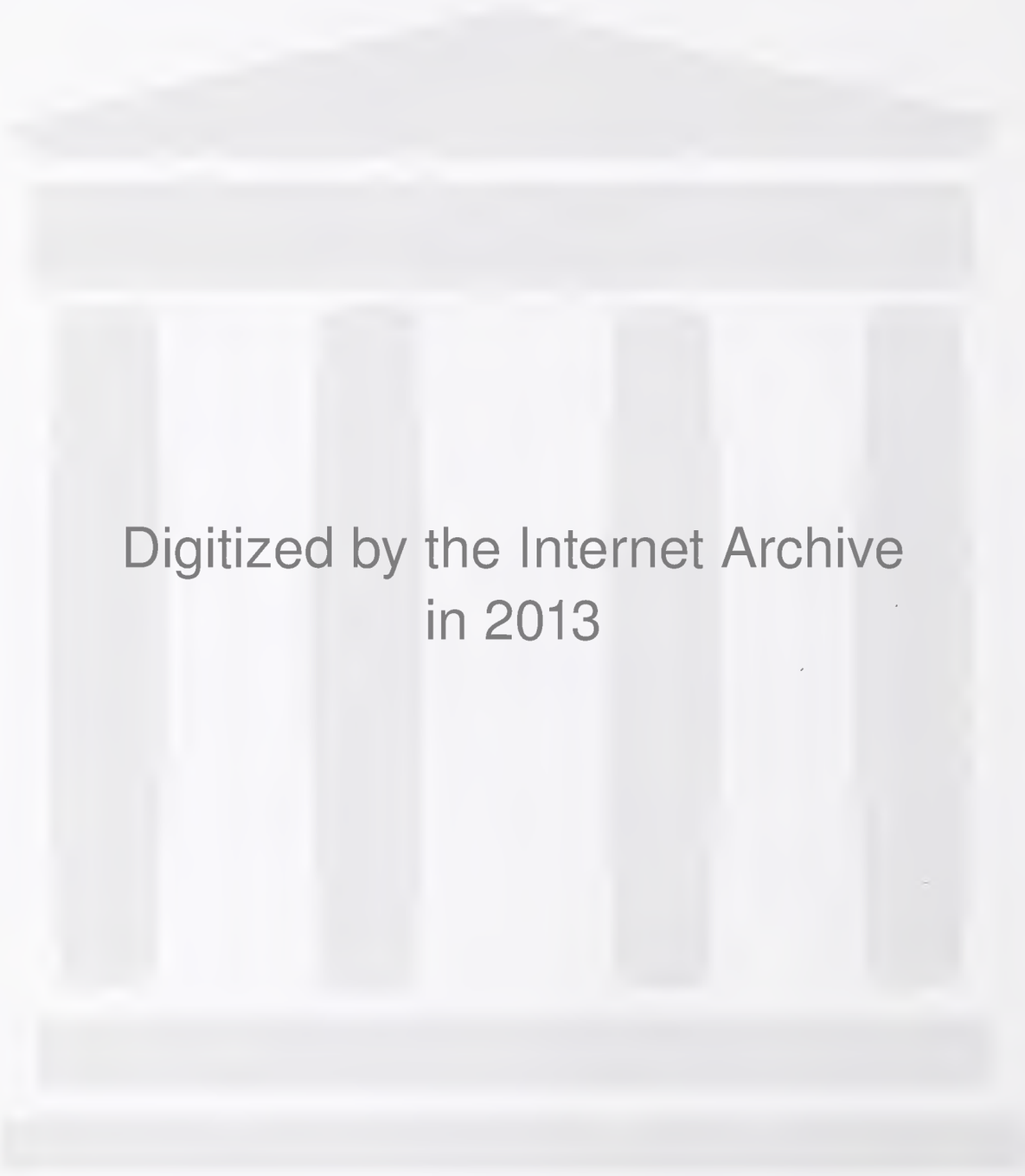

APPEALS TASK FORCE - UPDATE

The Appeals Task Force is still very active. The entire group met six times during 1983-1984 completing the following tasks:

- One member of the task force assumed responsibility for developing case summaries of B.S.E.A. appeals cases including cases that have gone to State or Federal Court.

- The analysis of decisions has been completed in three categories which showed that the decisions were consistent. The categories were: residential school cases, extended day/year cases, and deaf education cases.

- Two types of questionnaires were developed to survey the impact of appeals. One addresses the impact in terms of costs and benefits to school systems. The other questionnaire addresses the impact on families and children and is being used to survey parents. A research and analysis subcommittee has been formed to evaluate the responses to the parent and special education administrator questionnaires. A pilot test is being conducted as 25 questionnaires have been mailed in each group. A more extensive survey will be conducted in the fall.

- An issue identification form has been developed to assist in the hearing process. This form was developed to assist parents and schools in identifying areas of disagreement and possible solutions.

- A four-hour workshop was conducted by the Task Force on May 25 at Wellesley College. The workshop, sponsored by The Education Cooperative, consisted of several reports by task force members and a role play followed by questions and discussion. Workshops were also conducted at the annual RAC/SAC conference, and for the Central Regional Interdepartmental Team Conference in January.

The Appeals Task Force will continue as an advisory group to the Division. Ongoing activities include further decision analyses, surveys, publishing a comprehensive guide to the appeals process, and additional training activities.

Members of the Task Force are:

Carol E. Kervick, Director, Bureau of Special Education Appeals
Ruby C. Brathwaite, Ed. Spec. II, Bureau of Special Education Appeals
John Burgess, Special Education Director, Amherst-Pelham Region
Ann M. Cohen, Esq. Dept. of Social Services
Robert Crabtree, Esq., Kotin, Crabtree and Strong
Evelyn Doherty, Parent Advocate
Donald Freedman, Esq., Newton Center
Frank Garfunkel, Boston University School of Education
G. Raymond Healey, Special Education Director, Framingham

Richard Howard, Esq., Developmental Disabilities Law Center, Boston
Joseph Keefe, Superintendent of Schools, Natick
Janice Lachowetz, Special Education Director, Frontier Region
Kathleen McNeil, Advocate, Advocacy Associates
Dr. Emile Rosenberg, Special Education Director, Milton
Arthur Stewart, Ed. Spec. IV, Bureau of Special Education Appeals
Richard Sullivan, Esq., Murphy, Lamere and Murphy
Caroline White, Special Education Director, Natick
Mary Jane Yurchak, Special Education Director, Wayland

CASE STUDY

PRELIMINARY STATEMENT

T. is a ten and one-half year old fourth grade student, who had attended the Revere Public Schools through grade three and was enrolled by her parents at the Little People's School in September 1979. In prior years, the Revere Public Schools had provided speech and language therapy to T. and her parents had elected to provide private psychotherapeutic services [Ex. 2, 4, 16, testimony of Ms. Beall, private psychologist, and Ms. Kamenske, Speech and Language therapist]. As a result of teacher and parent concern about T.'s difficulties in her regular class placement early in grade three, Revere Public Schools developed a new educational plan for November 1978 to June 1979 [Ex. 4, testimony of Mr. P., Dr. Caporale, Revere psychologist]. Parties concur that this plan was not appropriately implemented and that the school did not prepare a plan for 1979-80 prior to the end of the school year [testimony of Mr. P., Mr. Pietropoalo]. Mr. and Mrs. P. notified Mr. Pietropaolo, newly appointed Special Education Administrator, of the lack of new plan during July 1979. The school system and parents did not agree to independent evaluations, which were conducted during the summer. The Revere evaluation team convened on September 14, 1979. The IEP sent to the parents on September 19, 1979, did not include a classroom schedule; said schedule was forwarded prior to October 10, 1979, [testimony of Mr. Pietropaolo]. The parents rejected that plan and argue that the placement did not respond to T.'s need for a language based program in a setting that considered T.'s emotional needs and her distractibility.

The school committee argues that the plan provides extensive special education assistance in language areas, opportunities for appropriate integration into regular education with teachers and a general environment which can respond to T.'s needs.

ISSUES

1. Whether the educational plan (502.3 prototype) proposed by the Revere Public Schools is adequate to meet T.'s language, conceptual and emotional/social development needs, or in the alternative.

2. Whether the Little People's School (502.5 prototype) is the least restrictive adequate placement for T.

ANALYSIS OF THE EVIDENCE

Evaluation of T.s Special Needs

Parties do not dispute that T. exhibits distractibility, intense anxiety, deficient language development, and interactional difficulties which have impacted on her educational progress and her adjustment to school. [Ex. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16]. T. has strengths in areas that require note memory skills, for example word decoding, spelling, mathematics computation [Ex. 5, 9]. However, testing shows weaknesses with tasks requiring conceptualization and reasoning, such as recall of themes, sequencing in logical order [Ex. 9, 6, 10, 15, 12, 16, 1]. Testing during the summer 1979, prior to entry into grade four revealed reading comprehension at upper second grade level [Ex. 10]. Parties concur that intelligence test scores, showing considerable intratest as well as subtest to subtest variability, are not valid [Ex. 8 and testimony Caporale].

Parties concur that T.'s language development has improved, progressing from "Echolalic" language at grade one (Testimony Beale, Kamenske). Parties also concur that T. still evidences language difficulties, particularly in written and oral expression [Ex. 10, 12]. No neurologically based difficulties are indicated according to Dr. Hart. He did recommend a trial program of Ritalin but no results are included in the record [Ex. 11].

Parties concur that emotional factors are significant determinants in T.'s learning and school adjustment. Several outside evaluators observed that T. has difficulty dealing with stress in a testing situation [Ex. 8, 9, 10, 11]. Similarly, Dr. Caporale, Revere School psychologist, agreed that T. is fearful of "being alone or abandoned" and "struggles to control impulses." In the classroom setting last spring her teacher and Principal observed that "finding the right page caused T. to be anxious" and that she "shouts out for additional directions before beginning any given task" [Ex. 5, 7]. Her parents cited her fears of being scapegoated by classmates; Dr. Caporale had observed T. on one occasion as outside of a group during play ground activities, and Dr. Johnson cites T.'s mention of playmates in the area, but none at school, [Ex. 8].

SUBSEQUENT HISTORY

In August 1984 Mr. P., T.'s father was interviewed by phone. He reported that T. made extraordinary progress far beyond the expectations of the public and private school. She remained in the .5 program for 3 years - 1979-80, 1980-81, 1981-82. In the spring of 1982 Revere initiated the 3 year reevaluation. At that time all people involved recommended T. return to a less restrictive program in the junior high school. It was reported that T.'s language improved greatly. Significant progress was noted in self esteem, interaction with peers, achievement of goals and objectives of IEP. T. returned to a 502.2 prototype in 7th grade - all regular education courses with resource room assistance. She now has successfully completed the 8th grade and her father reports that she is happy with the public school program, has lots of friends and is a typical teenager making normal adolescent adjustments. He wonders what would have happened if she had not had the 3 years of intense programming. He was thankful that he rejected the

IEP when he did and that his daughter had the opportunity to grow academically and emotionally before reaching the difficult years of adolescence. He is a little concerned about her going to the high school because of the size of the building and the number of students but T. herself is not experiencing any anxieties about the transition. He was represented at the hearing by an attorney - as was the school. He felt that the expense ($3,000), which was difficult for the family to bear, was well worth it. "An average person like me could not go through the process without a lawyer." The family and the school personnel never had a bad relationship but he always doubted their ability to deliver on promises made. Now there is a higher degree of trust on both sides.

BURLINGTON V. DEPARTMENT OF EDUCATION

Town of Burlington v. Department of Education, 736F. 2d 773 (1st Cir. 1984).

The case involved a parent-initiated placement in the Carroll School. That placement was upheld by the BSEA. On appeal to U. S. District Court by the Town of Burlington, the District Court held that the town's placement was appropriate under Federal law and ordered the parents to reimburse the town for tuition paid to the Carroll School. The First Circuit Court of Appeals substantially reversed the District Court and has remanded the case for new proceedings.

The decision addresses a number of significant issues pertaining to the standard of review to be utilized by the Federal courts in reviewing appeals from the Bureau of Special Education Appeals decisions. In particular the Court ruled that deference must be paid to the Bureau's interpretation and enforcement of Massachusetts special education statutes and regulations, provided those laws are consistent with and supplement the Federal Education for All Handicapped Act (20 U.S.C. 1401 et seq.). In addition the Court elaborated on the circumstances under which reimbursement is available to a party who prevails in judicial proceedings, as follows:

1. A unilateral placement initiated by a parent does not necessarily preclude the award of reimbursement to the parent, if the reviewing court determines that the placement was necessary for the student to receive appropriate special education.

2. A town must fund a special education placement ordered by a Bureau hearing officer, and may not receive reimbursement for expenditures made during the duration of the IEP reviewed by the hearing officer.

3. A town may be awarded tuition reimbursement from parents if it prevails on review for the period not covered by the Bureau order. However, it may forfeit this equitable right if it has violated the parents' procedural rights under state or federal special education laws.

Summarized by Kris Apgar.

NOTE: The United States Supreme Court granted certiorari in this case. It was heard March 26, 1985.

TOWN OF WESTON V. BUREAU OF SPECIAL EDUCATION APPEALS & OTHERS

Appeals Court for the Commonwealth of Boston, 78-331

April 6, 1984

Judge: Perretta, Hale, Rose

This decision is a final decision upholding a Bureau's determination that Weston failed to provide an adequate program for Mark S. and ruling that the program ordered by the hearing officer was appropriate.

In so doing, the court stated that 1) the plaintiff made no request for an evidentiary hearing on its complaint for review, and would have had a right to such hearing if requested; 2) the plaintiff's right to introduce additional evidence in the Massachusetts District Court hearing was limited to the claim of bias on the part of the hearing officer, and 3) the plaintiff submitted insufficient facts, which, if true, would support a claim of bias on the part of the hearing officer, and 4) under both substantial evidence standard and preponderance of the evidence standard, the Bureau made no error in its decision.

The court's holding was made after reviewing the outcome of the School Committee of Franklin vs. Commissioner of Education, 17 Mass. Appl. Ct. 683 April 1984.

JOHN DOE, ET AL., V. BROOKLINE SCHOOL COMMITTEE

United States Court of Appeals, First Circuit, 83-1131

December 9, 1983

Judge: Campbell, Bownes, Perez-Gimenez

Appeal from the United States District Court for the District of Massachusetts

Appeal of District Court's order that school committee fund the cost of a handicapped student`s education at a private school until the completion of all review proceedings specified in 20 U.S.C. s1415. The school committee had paid the tuition at the private school for the 1981-82 school year, but had refused to pay for the 1982-83 school year. Parents filed a motion requesting that the school committee be ordered to continue paying for the child's education at the private school until the merits of the IEP proposing public school placement had been finally decided. Parents argued that 20 U.S.C. s1415(e)(3) mandated such an

order and that a preliminary injunction was not required.

HELD, order vacated and case remanded.

Interpretation in Doe v. Anrig, 1982-83 EHLR Dec. 554:271, or s1415(e)(3) requiring that "whoever was paying for the placement prior to review shall continue to do so while review is pending" is overruled.

The proper procedure for determining which party will bear interim costs for maintaining a private placement is a motion for preliminary injunction, such motion to be made by the party wishing to depart from the status quo.

A party that seeks to modify an existing educational placement, program or service must also proceed by motion for preliminary injunction, the party seeking modification of the status quo bearing the burden of proof. However, courts are cautioned against routinely reevaluating or enforcing state administrative decisions regarding placement on a motion for preliminary injunction.

Reimbursement of tuition and related services is available at final judgment to the prevailing party under 20 U.S.C. s1415(3)(2).

Serious procedural errors are grounds for denial of reimbursement. Thus a school district forfeits its right to reimbursement by, for example, unilaterally ceasing its tuition payments to a private school.

Reprint from EHLR.

SCHOOL COMMITTEE OF FRANKLIN V. COMMISSIONER OF EDUCATION

Cite: 17 Mass. App. Ct. 683

April 1984

Judge: Zobel

Where, in hearing a school committee's appeal of a state Department of Education (DOE) ruling, a superior court judge (1) admitted additional evidence to that heard by the DOE hearing officer, and (2) concluded that the assignment of special needs student to a particular private school was not an "appropriate" education within the meaning of state laws and regulations, he acted correctly.

Accordingly, his decision to deny the student's parents reimbursement for the cost of the private school will be affirmed.

(W)e find that the DOE's and the parents' principal objection is that the judge did not give sufficient consideration to the agency record but decided the case exclusively on the additional evidence received in court. The objection finds little support in the judge's careful analysis of the holding in Board of Educ. of Hendrick Hudson vs. Rowley, 458 U.S. 176 (1982), reasoning that the requirements in (20 U.S.C.)

s1415(e)(2) that "the court shall receive the records of the administrative proceedings" implies that the agency judgment be accorded weight. The judge may have gone the Rowley case a step better by according the agency decision prima facie weight, having binding effect until refuted by others, more persuasive evidence in a manner analogous to masters' findings in jury actions (see New England Acceptance Corp. v. American Manufacturers Mut. Ins. Co., 4 Mass. App. Ct. 172, or District Court decisions in retransfer cases (see citation).

To a large extent the department, in contending that Leland Hall (the private school) was appropriate for Kevin, is forced to rely on evidence introduced at the department's hearing rather than on the findings of its hearing officers.

In the circumstances the judge cannot be faulted for having placed more reliance on evidence he heard than on evidence introduced at departmental hearings and not made the subject of agency findings. Unlike the hearing officer, the judge had the advantage of hearing the testimony of Leland Hall's sole full-time teacher.

There was also contradicted evidence that the department itself had denied Leland Hall eligibility as a Chapter 766 resource school during a portion of the time for which the second hearing officer ordered reimbursement.

It is not clear that the parents would have had a right to reimbursement even if the departmental findings had been sustained.

In the present case, there has been no finding (as in other decisions), that an appropriate program could not have been formulated in the public school (the first hearing officer found that it could), and neither hearing officer (of the two who considered this case) found that the Leland Hall placement was the least restrictive program prototype mandated by the departmental regulations. Under G.L. c. 71B, s3, private placements are authorized only when the appropriate special education program . . . (T)he statute does not permit the reimbursement of money which is spent for a child who unilaterally enrolls in a private school.'"

Judgment affirmed.

Reprint from Lawyer's Weekly - April 16, 1984 - Cite 12 M.L.W. 936-937.

DESISTO SCHOOL, INC., V. JOHN LAWSON

United States District Court - District of Massachusetts 83-0077F

December 2, 1983

Judge: Freedman

Where three "special needs" students have not yet exhausted the administrative remedies available to them under the Education for All

Handicapped Children Act, they may not bring a suit in this court challenging, as violative of the Act, a Department of Education policy which allows for the funding of "special needs" students in private residential facilities only at institutions that devote themselves exclusively to the education of the handicapped.

This count of their complaint will therefore be dismissed.

Other counts brought by these individual plaintiffs, or by their school, under the Rehabilitation Act of 1973, the Due Process Clause, and 42 U.S.C. s1983 must also be dismissed. The Rehabilitation Act count brought by the individual student plaintiffs cannot stand because once again here the plaintiffs have failed to exhaust their administrative remedies under the Act before approaching this court.

In turn, related counts brought by the school on behalf of its students must also fail since the school lacks standing under the Act to bring such a suit for the benefit of others.

As to violation of due process charges brought by the school, I find that it "Has failed to demonstrate that the actions of the defendants violated fundamental rights, or that their actions were such a flagrant abuse of power that (the school) is entitled to constitutional protection."

This section of the complaint must therefore be dismissed as failing to state a claim upon which relief may be granted.

Lastly, I hold that the student plaintiffs have asserted an actionable claim here of a deprivation of civil rights secured under the laws of the United States.

This claim lodged under 42 U.S.C. s1983, "hinges on proof of a violation of either the EHA or Section 504 of the Rehabilitation Act."

Because of the results reached earlier on counts based on these Acts, there is no basis for a valid cause of action here pursuant to s1983.

In summary, all plaintiffs have failed to state any claim upon which this court may enter a judgment on the merits. Their suit will accordingly, be dismissed.

Reprint from Lawyer's Weekly - July 16, 1984.

RICHARD STOCK V. MASSACHUSETTS HOSPITAL SCHOOL & OTHERS

Supreme Judicial Court for the Commonwealth at Boston, 392 Mass. 205.

June 19, 1984

Judge: Nolan

Where defendant school officials developed an Individualized Educational

Plan (IEP) for the mentally-handicapped plaintiff, which included an intent to graduate him at the end of the academic year and thus terminate his eligibility for special education services, without ever providing the plaintiff's parents with formal, written notice of their right to challenge the IEP or the procedural avenues open to them to make that challenge, we conclude that the child's graduation was procedurally and substantively defective.

We agree with the plaintiff that the decision to graduate a child with special education needs is a "change in placement" triggering the mandatory procedural safeguards of the Education of All Handicapped Children Act (EAHCA) described in 20 U.S.C. s1415.

"No change in placement seems quite so serious nor as worthy of parental involvement and procedural protections as the termination of placement in special education programs. Under the federal scheme, a change in placement requires formal, written notice of the decision to graduate a child, as well as notice of parent's right to protest that decision, a description of the administrative remedies and procedures to be followed, and a description of any alternative services which may be available.

"From all appearances, the Stocks received actual notice of a fait accompli, without any notice that they might challenge the decision. It is difficult to find justification for permitting a young man with Stock's handicaps to pass through and out of the special education system by virtue of his signature on an IEP - which did not even mention the graduation decision - without some evidence that he or his parents were aware of the consequences of doing so and the alternatives available to them. We note that the conduct of which Stock complains was in direct violation of the department's special education regulations."

However, even though plaintiff further urges this court to set standards for the attainment of a "high school diploma or its equivalent," the achievement of which terminates eligibility for special education services, this we cannot do because academic standards are peculiarly within the expertise of the department and local educational authorities.

Accordingly, the trial judge's entry of summary judgment in favor of the defendants must be reversed. Further, because the award of a diploma was both procedurally and substantively deficient, the diploma was rescinded. The case is remanded to the Superior Court with directions that it order the department to take jurisdiction and to hold a hearing on the matter of providing special education services to Stock.

-Defendants' jurisdictional and administrative arguments are rejected.

Reprint from Lawyer's Weekly.

DAVID D. V. DARTMOUTH SCHOOL COMMITTEE, ET AL

U. S. District Court, 83-1753-A

March 23, 1984

Judge: Zobel

Where a 17 year old boy with Downs Syndrome habitually exhibits sexual and aggressive behavior toward other people and animals, I find (1) that he requires educational placement in a residential setting and (2) that a non-residential "individual education program" designed for him by Dartmouth School Committee in 1982-83 was unacceptable.

The Evidence

"The preponderance of all evidence compels a finding that plaintiff cannot adhere to acceptable standards of behavior when not under supervision or in a carefully controlled setting.

"I am mindful that much of the more extreme sexual and other disruptive behavior occurred in evaluative settings unfamiliar to plaintiff; two of these were residential schools, and at [the Doctor Franklin Perkins School] he understood he might be placed there.

"However, I credit Dr. [Andrea] Spencer's testimony that plaintiff's behavior was not attributable to the evaluative setting; that in her experience prospective students were generally more hesitant and well behaved than usual when coming to the school for evaluation.

"Moreover, plaintiff behaved inappropriately not only in every evaluative setting where the plaintiff was seen, but in his own neighborhood around home and school. Plaintiff on numerous occasions attempted to engage in sexual play with dogs. He has repeatedly entered neighbor's house without permission and refused to leave, and refused to leave automobiles. During his eight-week evaluative stay at Bradley Hospital, plaintiff engaged in inappropriate touching and other improprieties several times each day when left alone. Even [Dartmouth High School Special Needs teacher] Mrs. Thompson described an incident when plaintiff disrupted a high school football game which he attended without supervision; she did not believe he could behave acceptably at such events unless supervised.

"The additional evidence received at trial made it clear that plaintiff's unacceptable actions do not occur merely as isolated instances but rather are a contributing and consistent problem."

Conclusions

"All witnesses agreed that I find that the ability to generalize social and behavioral skills learned in a classroom is an appropriate part of a special educational program for mentally retarded persons such as plaintiff. David's need for training to enable him to generalize behavioral control learned in school is therefore one that should be addressed by his IEP.

"I accept the conclusion of plaintiff's experts that the Dartmouth IEP as

amended was not adequate to meet plaintiff's need to learn to generalize social skills because it did not provide for consistent response to his behavior and training in control of them throughout his waking hours. A residential program is necessary in order to teach plaintiff to behave appropriately in situations lacking external controls. I find that without such a program plaintiff's behavior is likely to continue and agree with the hearing officer's finding that such behavior would prevent him from being accepted in a community-based residence or workshop for which he is otherwise well suited.

"The state standard mandates that an IEP assure plaintiff's maximum possible development. I find persuasive the unanimous opinion of plaintiff's experts that plaintiff requires a residential training program in order to achieve the maximum progress in development in his ability to function as independently as possible and that a residential setting is the least restrictive environment in which plaintiff's educational needs could currently be met.

"Therefore, I conclude that plaintiff has met the burden of proving that the Dartmouth IEP for 1982-83 (as amended) is inadequate; and I find that placement in a residential school providing a program such as that offered by FPS is the educational placement appropriate for plaintiff."

Reprint from Lawyers Weekly.

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
Finding of No Special Needs	83-0780	Issues: 1. Physical and Occupational Therapy. 2. Whether he is a special needs student. Profile: Deliberate and somewhat awkward very bright and verbal seven year old in the first grade. Parents' Position: Allyn easily fatigues, has balance and coordination problems, and poor motor planning ability. These problems are reflected in academic, social and psychological problems. School's Position: Allyn may have some minor clinical motor problems, but does not manifest any functional impact in school. He works above grade level academically and appropriately socially. Findings: Allyn has special needs and Randolph is required to provide adaptive physical therapy, occupational therapy consultation. Randolph is also responsible for retroactive reimbursement for visiting nurse services.		
Least Restrictive Environment	84-0047	Issues: Is the 502.4 IEP proposed by Waltham for David the least restrictive, adequate and appropriate placement for him. If not, then what is? Profile: David is a 13 year old, with severe primary reading disability. He functions academically at the second - third grade levels in reading and spelling and at the fourth grade level in math. He has average (to higher) cognitive potential. David has no interfering emotional issues, as he gets along well in school and experiences success and recognition in non-academic subjects.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0047 cont.	Parents' Position: After 5 1/2 years of special education services, David has made minimal progress. He needs a systematic, cohesive remediation program, including 1:1 tutoring, and the use of a system such as Orton-Gillingham. Parents ask for a 502.5 placement. School's Position: David has severe primary reading disability. His current skills levels are consistent with that diagnosis. Waltham offers the 1:1 tutoring he needs, but disputes the need for a systematic reading approach. Findings: Waltham's 502.4 IEP is not adequate and not appropriate, as it fails to offer a consistent, systematic approach for David. David is highly motivated and needs a consistent Orton-Gillingham type program, with substantial 1:1 tutoring, with coordination among all academic teachers, with class placement of students similarly reading/learning deficited. The hearing officer ordered Waltham to locate or create an appropriate 502.4, 502.4(i) or 502.5 program within 25 days of the decision.		
Transition Plan	84-0058	Issues: 1. Is the 502.3 IEP proposed by Boston the least restrictive adequate and appropriate program? 2. If not, is the 502.4(i) program? 3. If not, is the 502.5 at Leland Hall? Profile: Neal is a learning disabled 12 year old of at least average intelligence with reading difficulties, attendance problems and behavior problems who has failed to make academic progress.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0058 cont.	Parents' Position: Neal is unable to access Boston Schools because of the extent of his feelings regarding his past failures. Neal can succeed at Leland Hall because it is appropriate and he believes he can learn there. School's Position: With careful transitioning, Neal can be served in a less restrictive 502.4(i) program at the Dearborn School. Findings: The rejected IEP (502.3) is inadequate as conceded by Boston. The proposed 502.4(i) with transition program of tutoring and summer remediation all by the classroom teacher is adequate and appropriate because it meets the suggested criteria outlined by the independent evaluator for remediating Neal's problems and allowing him to develop an expectancy of success.		
Counseling	84-0106	Issue: Is the resource room placement taught by a teacher with whom the parents and child are in conflict the least restrictive adequate appropriate setting to address Robert's behavioral needs. Facts: It is stipulated by the parties that Robert displayed considerable academic and behavioral progress in the resource room until an incident between he and his teacher on April 19, 1983. Robert continued to make progress for three weeks after the incident then his behavior deteriorated to the end of the school year. Robert has not attended school this year.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0106 cont.	Findings: Find that evidence is insufficient to conclude that student/teacher relationship is irretrievably broken to render an otherwise adequate program inadequate. Retain jurisdiction pending a two month period of attendance by student and provision of counseling by school. Motion to reopen will be entertained on the completion of a two month period where good faith efforts of resolution have been complied with.		
Private Day Placement	84-0129	Issues: 1. Failure to progress under similar plan 2. Direct services in resource room for 90 minutes daily would be delivered solely by paraprofessionals. 3. Emerging secondary emotional overlay related to child's continuing frustration and failure to perform adequately. Profile: Chris is a 10 year old learning disabled child whose academic skills showed at least a two-year deficit as he entered the 4th grade (1983-84). His cognitive abilities were considered average - full scale IQ - 92. Attributable largely to his mounting difficulties with academic performance, his peer relationships and self-esteem worsened during the third grade. He attended the first through the third grades in Westwood until his parents placed him at the Carroll School in 9/83. Parents' Position: Chris' two-year lag in the acquisition of basic academic skills indicated that he had received just one-half of the fundamental underpinnings required for future academic growth despite the delivery of special education services for three years.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0129 cont.	They argued that the Carroll School provides an intensive language-based program, delivered consistently throughout the school day, in a supportive and compatible learning setting. School's Position: The proposed 502.3 IEP not only identified and addressed his academic/motor/ emotional special needs that was supported by considerable special education intervention, but also provided mainstreaming opportunities. Since the plan was the least restrictive adequate and appropriate program, Westwood was not responsible for the 502.5 placement. Findings: Decision found for the 502.5 Carroll placement based on the following grounds: 1. Although the resource room teacher plans and supervised all direct services, Chris' total instruction for 90 minutes daily would be delivered by paraprofessionals who lack special education training; 2. Using the Franklin decision, even if Westwood increased the prototype to a 502.4, his instruction would remain with paraprofessionals, and he would be the only 502.4 student in the resource room thereby impacting on his fragile emotional well-being; 3. Since the plan provided that he would start the school year in regular education 4th grade math, and testing indicated that his math skills were at least two years below grade placement, his chances of successful performance were virtually non-existent; 4. Westwood agreed that his proposed placement in regular 4th grade social studies and science would result in his inability to read the texts and participate fully in class; and 5. Carroll could provide the intensive reading/language remediation in a team-teaching approach (at least one of his two teachers was special education certified) that had the capability of closing the gap in his academic skills.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
Least Restrictive	84-0162	Issues: Is the 502.2 proposed by Wayland least restrictive? If not, is a 502.5 at Carroll School? Profile: Richie is a 12 year old boy with high average intelligence and language disabilities functioning approximately one year behind. Parents' Position: Wayland's proposed IEP is substantially similar to past IEP under which Richie has failed to progress more than a year in a year's time and under which he has become "at risk" for psychopathology. Carroll School is the least restrictive adequate and appropriate setting. School's Position: Richie's proposed IEP provides for all of the recommendations made by CHMC and is the least restrictive adequate and appropriate plan. Findings: Find for Wayland. Plan incorporates all recommendations by CHMC including those directed at Richie's psychological needs. Predictions as to Richie's capacity to progress at a faster pace are sufficiently speculative so as not to justify any finding based on failure to progress sufficiently in the past.		
Placement Pending Appeal	84-0259	Issues: 1. Does child need language-based, rather than learning disabilities, placement? 2. Has Boston implemented plan in compliance with IEP? Is issue moot? 3. What is placement pending appeal?		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0259 cont.	Profile: Ten year old girl with long history of language problems, emotional issues, inattentiveness. Currently at age level for receptive language, slightly below age level expressively. Significant word find problem. Academic skills nearly at grade level. At least average cognitive skills. Parents' Position: Child requires intensive language program because of persistent language problems. Current class is out-of-compliance because of lack of qualifications of teacher, materials and methodology. Compliance issue is not moot because of placement pending appeal rights. School's Position: Child's language problems, though continuing, are mild. Peer group, intensive language focus, materials of language class are inappropriate; child is more appropriately placed in 502.4 learning disabilities class. Findings: 1. Prospectively: learning disabilities class is adequate and appropriate. Agree with school that peer group and language focus of language program are inappropriate. Though child has language needs, these are more appropriately addressed, given nature and severity of these needs and given child's cognitive and academic strengths, in L.D. class.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0259 cont.	2. Current language class is out-of-compliance with IEP. Teacher has no training or experience or education in language field. She does not even understand goals and objectives of IEP. Issue is not moot because of placement pending rights. 3. Placement pending appeal is current language program under 327.2.		
Extracurricular Activity/ Transportation	84-0347 84-0345	Issues: 1. Whether student needs an extended day program. 2. Whether student's right to equal access to extracurricular activities applies to specialized activities in the private school setting. 3. Whether the LEA or the Department is responsible for providing the transportation. Profile: Two students are deaf and attend a private school for the deaf pursuant to 502.5 protctype IEP's developed by the LEA and funded by the Department of Education because of their ch. 750 status. Both students have participated in the private school's after school sports programs and require continued late afternoon transportation in order to continue their participation. Parents' Position: The parents assert that both students have state and federal rights to the after school program and late afternoon transportation because 1) their education needs include social and emotional development which is addressed in this program; 2) the late afternoon transportation is a related service to such IEP, and 3) their equal access rights to extracurricular activities provided non-handicapped students require the specialized sports programs offered at the private schools.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0347 84-0345 cont.	School's Position: The school asserts that any rights the students have to extracurricular activities and the late afternoon transportation are the responsibility of the Department of Education who funds the special education programs of Ch. 750 students. Department of Education's Position: The Department asserts that 1) the students do not need the extracurricular activities for educational reasons, 2) any equal access rights the students have apply only to those main-streamed activities provided non-handicapped students and not to specialized activities for handicapped students. Findings: 1. The first student has emotional/social problems rendering her unable to socialize with hearing children and requires an informal setting such as provided at the after school program. Accordingly, her educational needs require the extended day component to her IEP. The late afternoon transportation is a related service required for her participation. 2. The second student has no educational need for the after school program; he is an emtionally stable and socially adept student with hearing and non-hearing peers. 3. The second student's right to equal access to extracurricular activities is limited to those activities provided non-handicapped students and do not extend to specialized activities at the private school. 4. Transportation necessary for the extended day program and for participation in main-streamed extracurricular activities is the responsibility of the Department pursuant to the Department's policy of transporting Ch. 750 students.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
Residency Requirement	84-0604	Issues: Whether BSEA has jurisdiction to hear the father's claim, or whether the claim should be dismissed since the student is currently residing with his mother in Nashua, N. H. Profile: Stephen is a 15 year old student who was enrolled in the Haverhill Public Schools from kindergarten until 11/83 when his parents placed him in a psychiatric hospital in Hampstead, N. H., because of a poly-substance abuse problem. He received special education services in Haverhill on a continuing basis since 1974-75. Following his discharge from the hospital in 3/84, he has lived with his mother and step-father in Nashua, N. H., since they are able to provide 24-hour protective and supervisory care recommended by hospital professionals. Parents' Position: Although the divorce decree granted physical custody of Stephen to his father during his minority, the father, a Haverhill resident, agreed to Stephen's living with his mother pending the resolution of the father's dispute with Haverhill to provide special education services. The father rejected the IEP proposed by Haverhill either shortly prior to, or just after, Stephen's return to the same 502.4 alternative high school program that he attended before his hospitalization. School's Position: Since Stephen is living in New Hampshire, he fails to meet the residency requirement set forth in Ch. 71B, sec. 3. Therefore, Haverhill is not responsible for providing special education services. Haverhill moved to dismiss the father's claim for services.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0604 cont.	Findings: The residency requirement enunciated in Ch. 71B, sec. 3, is clear, explicit, and controlling under the circumstances of this case. Although Stephen intends to resume his residency with his father, the notion of intentionality (addressed in Ch. 76, sec. 5, dealing with school attendance) cannot be considered, but rather the actuality of his current residence in New Hampshire. Motion to Dismiss was granted with the provision that as soon as Stephen resumes living with his father in Haverhill, Haverhill will become immediately responsible for providing adequate and appropriate services to meet his educational/ emotional/behavioral special needs.		
Day Placement	83-0671	Facts: A 3 1/2 year old severely-profoundly retarded child needs a residential program. The parties dispute whether such need is for educational reasons. The parents assert that the 24 hours of nurturing and stimulation is educational in that he is happy there. The school asserts that its 502.8(c) prototype IEP is adequate and appropriate. Findings: The 502.8(c) prototype IEP is adequate and appropriate. First, it provides behavioral techniques designed to maximize the consistency and repetition of tasks necessary for a child such as David with such limited cognitive abilities. Secondly, the record has no evidence supporting an assertion that David can make more progress in a 24 hour setting than in a day program.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
Hearing Impaired	83-0953	This case involves a deaf, language delayed, 6 1/2 year old child who currently attends a 502.5 program at The Learning Center for Deaf Children pursuant to educational plans prepared by the Saugus Public Schools. Claiming that the child's travel time is excessive and that an appropriate program exists in the Lynn Public Schools, 502.4 prototype, Saugus proposes to move Jennifer to the Lynn Program. The parents case is predicated on the assumption that Jennifer needs "opportunities to interact with children, of similar chronological ages, that have more sophisticated signing skills for linguistic and social-emotional growth." In essence, Jennifer needs a mixture of small group special needs instruction to keep her on task, and large group activities to help her acquire language. Decision: The decision is in favor of the parents, who demonstrated that the Lynn program is socially and academically inappropriate for Jennifer, and would deprive her of the beneficial effects of a larger group. Conversely, the parents showed that T.L.C. will continue to meet Jennifer's needs in accord with the recommendations of her teachers and evaluators.		
Jurisdiction/ Reimbursement	83-0887	Profile: Michael J. is a 15 year old very bright student who has experienced learning problems since the first grade. His continuing academic frustrations have resulted in a serious secondary emotional overlay that became pronounced in fall 1981 during the 8th grade. His mother withdrew him from Rockland Public Schools in 12/81, and placed him in a residential program at Eagle Hill in 1/82 where he remained until 6/83. Evaluations by expert clinical psychologists in 9/83 and 11/83 determined that Michael's suicidal ideations placed him at risk for "accidental" suicide.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	83-0087 cont.	Parents' Position: Based on Michael's demonstrated academic deficits and worsening emotional condition, he needs the specialized services, integrated approach, and therapeutic milieu available in a 502.6 program at Eagle Hill. The parent requested retroactive reimbursement for the Eagle Hill placement for 2/82 to 6/83. School's Position: Michael's learning disabilities are not sufficiently severe to warrant a residential placement, and can be best addressed in a mainstreamed setting that will promote his strengths and self-image. Rockland rejected the parent's claim for reimbursement on the grounds that she failed to make her request either at the time of Michael's placement, or any time thereafter until 3/83. Decision: For the balance of 1983-84, it ordered a 502.6 placement at Eagle Hill, based on the compelling testimony of clinical psychologists that Michael needed to experience the supportive, therapeutic, and structured setting offered in the residential program at Eagle Hill, and on his demonstrated academic progress. The Bureau did not have jurisdiction to consider retroactive reimbursement to the parent prior to March 1983.		
Medical Services	83-0674	Profile: Robin B. is a 16 year old student who has psychiatric/emotional problems and a serious asthma condition. Despite numerous absences during 1981-82 and 1982-83 (including a 4-month hospitalization in a psychiatric unit at CHMC), Robin scored above grade level in reading, and at a respectable but below grade average in math.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	83-0674 cont.	Parents' Position: Requested a 502.6 placement at Germain Lawrence because: 1) Robin's emotional illness impacts upon her ability to learn, 2) Haverhill's proposed program offered a minimal and inadequate educational component, and 3) The parent is unable to provide requisite nurturance, support, and monitoring of Robin's asthma medications within the home. Haverhill's Position: Their support of 1-2 hours daily of tutoring at an Adolescent Day Treatment Center, a psychiatric day program conducted by DMH, rested on the following grounds: 1) The student composition of 8-12 troubled youngsters represents a range of compatible disorders with Robin's emotional problems, 2) When Robin evidenced a tolerance for additional academic demands, she would be gradually transitioned to Haverhill High School, and 3) As a regular education student who has achieved effective educational progress, Robin's emotional and asthmatic problems are medical - not special educational needs as mandated by the law. Decision: I found that her fragile self-image and poor peer interaction required a highly-structured, small group, therapeutic setting in either a 502.4, 502.4(i), or 502.5 to implement a full-day educational program. Her asthmatic and emotional problems did not require a residential school.		
Vocational Education	83-0886	Facts: A 19 year old mildly-borderline retarded young man has attended a residential school funded by DSS, for several years, due to emotional problems at home. The public school proposed a 502.4 prototype IEP calling for a vocational and academic program. The parents reject the IEP, asserting that 1) the peers should be of higher level skills than this		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	83-0886 cont.	young man, 2) he needs a residential program where he can continue his development of independent living skills, for a move home would cause regression in this area. The school asserts that the program is appropriate, for it offers 1) a secure, non-threatening setting, 2) a variety of intensive vocational training. It also asserts that the independence skills can continue developing in a day program. Findings: The public school's program, modified by including some courses from the higher level exploratory vocational program is adequate and appropriate. The young man can continue his development of independent living skills in this program, for DSS will provide counseling and a big brother program aimed at developing his ability to interact independently in his community.		
Residential Placement	83-0829	Profile: Profoundly retarded 9 year old male with extensive behavior problems who has been in a .4 and .5 program since 1977, demonstrating little or no progress, functioning at 12-24 month level across various skill areas with gross motor being the most developed. Parents' Position: Child's behavior inhibits teaching of ADL; highly structured residential placement required to reduce self-abusive and self-stimulatory behavior and teach ADL. School's Position: Child's failure to respond to intense behavior modification in day programs over 7 years renders it unlikely that he will progress to a higher level. Child requires supervision in waking hours but not education.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	83-0829 cont.	Decision: For 502.6 based on past and current recommendations from public and private programs for 502.6 and on evidence from 8 week 502.9 diagnostic residential placement that child's behavior has responded at least minimally to intensity of 24 hour programming, and that all methods of intervention have not been previously explored.		
Comparable Program	84-0622	Issues: 1. Need for intensive, well-structured language-based program. 2. Compatibility of class composition. 3. Inappropriate language and behavior peer modeling. Profile: John B. is a 6 year old child with about a 2 year developmental delay. His cognitive potential was assessed in 8/83 within the mild to moderate retarded range, and in 3/84 within the borderline range. He presented the following problems: expressive and receptive language at least 2 years delayed, poor short-term auditory memory, highly distractible, and socially immature. During 1983-84, John attended a regular kindergarten where his skill gains were minimal. Parents' Position: They rejected the 502.4 developmentally delayed class for 1984-85 because: 1. Since the class will include John and two Down's Syndrome boys, aged 8 and 9, they argued that he should not be placed with children of limited cognitive potential since John is not mentally limited. 2. They feared that the other boys would present inappropriate language and behavior models.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0622 cont.	3. The mainstreaming components that were split between kindergarten and first grade would contribute to John's confusion and insecurity. 4. The 2 month maternity leaved planned by the teacher in fall 1984 would adversely impact on his education. They requested a 502.5 program at the Krebs School. School's Position: Their support of the 502.4 program rested on the following reasons: 1. Based on a 3-1 ratio, the teacher can provide an intensive, highly-structured language-based program with considerable opportunity for 1-1 intervention. 2. The teacher and speech/language therapist coordinate closely to monitor daily progress, and reinforce skill gains. 3. Adaptive physical education is provided to the class twice weekly to remediate John's motor deficits. 4. The mainstreaming opportunities are consistent with legal requirements. Findings: Found for the 502.4 developmentally delayed class because: 1. The teacher was lauded by the parents' witnesses as a uniquely competent special educator. 2. Lack of evidentiary support that the other two boys would present inappropriate language/behavioral models. 3. Since a substitute teacher would be in the class at least a month prior to the classroom teacher's maternity leave, and would remain until her return, the delivery of special education services would remain consistent. 4. Evidence was presented that the class would not be expanded beyond the 3 students.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	84-0622 cont.	Ordered that all non-academic activities are provided within the first grade, and that Saugus should carefully monitor John's successful intergration.		
Private Day Placement/ Comparable Programs	83-1089	Issues: 1. Whether Diana requires a totally functionally-oriented program. 2. Whether she is capable of performing successful independent work. 3. Whether the principal teacher in the CHARMSS program is appropriately certified to serve in this capacity. 4. Whether the teacher's articulatory problems would impact adversely on Diana's ability to comprehend instructional materials, and to learn. Profile: Diana R. is a 10 year old multiply handicapped child who presents the following problems: spastic diplegia (a form of cerebral palsy); mild to moderate mental retardation (IQ within the 50-60 range); neurological impairment manifested in significant developmental delays; high degree of distractibility; short attention span; and socially immature. Diana has attended the Little People's School since 1980-81 school year. The parties agreed that the instant hearing would deal solely with Randolph's proposed IEP for the 1983-84 school year. Parents' Position: Parent rejected the 502.4 CHARMSS Butler program because: 1. Considering Diana's significant cognitive and developmental delays, she would not benefit educationally from the independent work segments in the absence of constant teacher intervention.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	83-1089	2. The articulatory problems of the principal teacher would result in comprehensive problems for Diana. 3. Disruptive behaviors by some children would require frequent interruptions in the teaching process, and affect negatively Diana's ability to learn. 4. Since she would likely be among the lowest functioning students, the possibility existed that her self-image would be impaired with an attendant decrease in educational performance. School's Position: Randolph asserted that: 1. The composition of the Butler class is compatible with Diana's global special needs. 2. Since the principal teacher is a certified speech/language teacher and therapist, and the focus of the program is essentially language-based, Diana will receive intensive remediation in her most pressing deficit area. 3. Since the two full-time aides are certified teachers in moderate special needs, the program affords considerable 1-1 teacher intervention. 4. Data collection during each instructional segment provides accurate charting of each child's progress consistent with IEP objectives, and a basis for flexibility in the presentation of materials. Findings: 1. A review of the LPS and Butler program showed a striking similarity in the composition of the classes and the curricula. The persuasive differences were: a) While the LPS curriculum is pre-set with minimal opportunity for the teacher to digress in addressing individual needs, the Butler teachers can exercise flexibility and		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
	83-1089	creativity in presenting instructional materials; and b) While both programs focus on promoting functional skills, the LPS program is wholly experientially-geared while the Butler program allows an opportunity for Diana to progress academically commensurate with her ability and potential. 2. Based on evaluative testing by the parent and school's expert witnesses, Diana could perform independent work with sufficient intervention and support. Since LPS had determined that Diana was incapable of successfully performing independent work without providing her with the opportunity, I found the parent's argument lacked evidentiary support. 3. Based on the testimony by a DOE witness that certification as a speech/language teacher involved training in teaching methodology, and the fact that the two full-time aides were certified special education teachers, I found that teaching would be provided consistent with special education requirements. 4. The record held unrebutted evidence that the occasional articulatory and grammatical errors made by the principal teacher did not affect adversely the ability of the students to comprehend the instructional materials, and to learn. Decision supported the Butler program for 1983-84, and found that Randolph was not financially responsible for the LPS placement.		

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
Graduation	83-0691	Issue: Whether a student should be graduated from high school. Facts: A 19 year old young man no longer eligible for Ch. 766 services who reads at a 2.5 grade level and who has the potential to develop skills to the 4th - 6th year reading level, and who is motivated to learn, asserts that he should not be graduated from high school until he has achieved such skills. Both parties agree that he would make such progress only in a 1:1 teacher/student ratio. The school asserts that the young man is no longer entitled to special education services. The authority to issue graduation diploma rests with the educational agency, unless it conflicts with the intent of Ch. 766 or P.L. 94-142. Findings: The LEA's decision to graduate the student did not conflict with Ch. 766 or P.L. 94-142, for it applied legitimate graduation criteria which incorporated the achievement of goals and objectives developed pursuant to the Ch. 766 process.		SAC refersed BSEA decision and ordered Littleton shall not issue its high school graduation certificate to Theodore and shall continue to provide special education services to him, and shall conduct a review of his progress, and propose such IEP as requested.

THEME	CASE #	CASE NOTE	CURRENT STATUS	COMMENTS
Personal Computer	84-0720	Issues: Does Mary require an Apple 2E computer package in order for her IEP to be adequate and appropriate. Profile: 20 year old non ambulatory, non verbal severe spastic quadriplegic currently communicating by responding to yes/no questions, gestures and switches. Parent's Position: Mary's IEP Team unanimously concluded that the Apple 2E package was essential for Mary to progress effectively academically and with language development. School's Position: Shared access to Apple 2E computer is adequate. Provision of a personal computer at home is not an educational need. Findings: Mary requires an Apple 2E package for an adequate and appropriate IEP. Her language and communication are an essential educational goal. All other alternative communication devices have been tried and have failed. Mary has all the prerequisite skills for success on the Apple 2E and with limited access since spring 1983 has shown significant educational gains.		

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY
FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JAN 16 1984

REVISED BULLETIN NO. 107

SPECIAL EDUCATION
PROGRAMS

INFORMAL LETTER TO CHIEF STATE SCHOOL OFFICERS

SUBJECT: Qualifications of State Level Reviewing Officials under Part B of the Education of the Handicapped Act (EHA-B)

During the initial years of administering EHA-B , the Special Education Programs Office (SEP) interpreted section 615(c) of the Act to mean that State education agency (SEA) employees, chief state school officers, and members of State boards of education could serve as reviewing officials under certain circumstances. In recent years, however, questions have arisen about this interpretation.

As case law developed in this area, it became clear that SEP's initial interpretation of section 615(c) should be reconsidered and appropriate clarification made. Our review of the express language of the statute, its legislative history and the varied positions taken by different Federal courts has led us to conclude that with respect to the designations of SEA employees, chief state school officers and members of State boards of educations a presumption arises under the Act that such persons are involved in the education and care of all handicapped children in the state and, thus, are generally precluded from serving as State level review officials under section 615(c). Absent a clear and convincing rebuttal, this presumption operates as a categorical prohibition.

In order to comply with the requirements of section 615(c), it is SEP's position that a State educational agency must either preclude the designation of SEA employees, chief state school officers and members of State boards of education from serving as state level review official or rebut the presumption described above by demonstrating that the State educational agency has in effect formal written procedures which ensure that accepted standards of procedural fairness and impartiality will be followed in the selection of state level review officials. At a minimum such standards must include:

(1) Any SEA employee or official designated to serve as a state-level review official will be a person who is not and has not been routinely personally involved in decisions made by local education agencies regarding any aspect of the identification, evaluation, placement or provision of free appropriate public education to handicapped children in such agencies either before or after such decisions are made;

(2) Any SEA employee or official designated to serve as a state-level review official will be a person who has not in any way been personally involved in any aspect of any decision made by a local school district with respect to the child about whom the hearing is concerned or with respect to similarly situated children in such school district;

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

If a State's EHA-B plan for FY 1984-86 does not include procedures that are consistent with the above interpretation, SEP will accept amended procedures submitted to SEP no later than June 30, 1984 to be implemented in the State no later than October 1, 1984.

If a State submits these procedures as an amendment to its FY 1984-86 plan, the public participation requirements in the EDGAR and EHA-B regulations must be met, because the revised procedures constitute a significant change in the plan.

Submission of procedures that are consistent with the above interpretation is one of the conditions that must be met in order for a State to receive its EHA-B grant for the fiscal year 1985.

An exception to the above transition period must be made in any State that is directly affected by a judicial ruling on this issue. In such a case, the State's FY 1984-86 plan must include due process procedures that are consistent with the court's ruling, in order for the plan to be approved.

If you have any comments or questions about this letter, or if our Office can be helpful in any way in revising your state level review procedures, please contact Dr. David Rostetter, Acting Director, Division of Assistance to States. ((202) 472-3796)

Sincerely,

Garry L. McDaniels
Director
Office of Special Education Programs

cc: State Directors of Special Education
State Part B Coordinators

STATISTICAL OVERVIEW

September 1983 through August 1984

	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	TOTALS
lew Cases	125	72	92	74	72	83	102	76	105	155	116	130	1202
lediated/ lgreed	71	55	34	39	37	23	34	53	32	53	52	55	538
lithdrawn/ ostponed/ ther	32	44	46	26	31	34	42	35	29	24	30	28	401
learings eld	28	33	37	23	22	18	22	20	22	17	16	16	274

September 1984 through January 1985

	Sept.	Oct.	Nov.	Dec.	Jan.	Totals
ew Cases	98	87	103	56	89	433
ediated/ greed	23	32	32	26	46	159
ithdrawn/ ostponed/ ther	28	32	28	31	43	162
earings	18	17	26	23	22	106

Total number of cases and outcomes since the implementation of Chapter 766 for the period 1974 through January 1985.

Total Number of Appeals	9079
Cases Mediated/Agreed	3951
Withdrawn/Postponed/Other	2039
Hearings Held	2566
Cases Pending Independent Evaluations/Mediation/Hearings	523
Total	9079
Decision Rendered 5/77 - 1/85	1147

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